Confidential

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION	MDL NO. 1456
THIS DOCUMENT RELATES TO: *The City of New York v. Abbott Laboratories, Inc., et al.* S.D.N.Y. Case No. 04-CV-06054 *County of Albany v. Abbott Laboratories, Inc., et al.* N.D.N.Y. Case No. 05-CV-0425 *County of Allegany v. Abbott Laboratories, Inc., et al.* W.D.N.Y. Case No. 05-CV-0236 *County of Broome v. Abbott Laboratories, Inc., et al.* N.D.N.Y. Case No. 05-CV-0456 *County of Cattaraugus v. Abbott Laboratories, Inc., et al.* W.D.N.Y. Case No. 05-CV-0256 *County of Cayuga v. Abbott Laboratories, Inc., et al.* N.D.N.Y. Case No. 05-CV-0423 *County of Chautauqua v. Abbott Laboratories, Inc., et al.* W.D.N.Y. Case No. 05-CV-0214 *County of Chemung v. Abbott Laboratories, Inc., et al.* W.D.N.Y. Case No. 05-CV-6744 *County of Chenango v. Abbott Laboratories, Inc., et al.* N.D.N.Y. Case No. 05-CV-0354 *County of Columbia v. Abbott Laboratories, Inc., et al.* N.D.N.Y. Case No. 05-CV-0867 *County of Cortland v. Abbott Laboratories, Inc., et al.* N.D.N.Y. Case No. 05-CV-0881 *County of Dutchess v. Abbott Laboratories,*	Civil Action No. 01-12257-PBS

Inc., et al.)
S.D.N.Y. Case No. 05-CV-6458)
County of Essex v. Abbott Laboratories,)
Inc., et al.)
N.D.N.Y. Case No. 05-CV-0878)
County of Fulton v. Abbott Laboratories,)
Inc., et al.)
N.D.N.Y. Case No. 05-CV-0519)
County of Genesee v. Abbott Laboratories,)
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W.D.N.Y. Case No. 05-CV-00267)
County of Greene v. Abbott Laboratories,)
Inc., et al.)
N.D.N.Y. Case No. 05-CV-0474)
County of Herkimer v. Abbott)
Laboratories, Inc., et al.)
N.D.N.Y. Case No. 05-CV-00415)
County of Jefferson v. Abbott Laboratories,)
Inc., et al.)
N.D.N.Y. Case No. 05-CV-0715)
County of Lewis v. Abbott Laboratories,)
Inc., et al.)
N.D.N.Y. Case No. 05-CV-0839)
County of Madison v. Abbott Laboratories,)
Inc., et al.)
N.D.N.Y. Case No. 05-CV-00714)
County of Monroe v. Abbott Laboratories,)
Inc., et al.)
W.D.N.Y. Case No. 05-CV-6148)
County of Nassau v. Abbott Laboratories,)
Inc., et al.)
E.D.N.Y. Case No. 04-CV-05126)
County of Niagara v. Abbott Laboratories,)
Inc., et al.)
W.D.N.Y. Case No. 05-CV-06296)
County of Oneida v. Abbott Laboratories,)
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N.D.N.Y. Case No. 05-CV-0489)
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N.D.N.Y. Case No. 05-CV-0088)
County of Ontario v. Abbott Laboratories,)
Inc., et al.)
W.D.N.Y. Case No. 05-CV-6373)
County of Orange v. Abbott Laboratories,)
Inc., et al.)

S.D.N.Y. Case No. 07-CV-2777)
County of Orleans v. Abbott Laboratories,)
Inc., et al.)
W.D.N.Y. Case No. 05-CV-6371)
County of Putnam v. Abbott Laboratories,)
Inc., et al.)
S.D.N.Y. Case No. 05-CV-04740)
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Laboratories, Inc., et al.)
N.D.N.Y. Case No. 05-CV-00422)
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Laboratories, Inc., et al.)
S.D.N.Y. Case No. 03-CV-7055)
County of Schuyler v. Abbott Laboratories,)
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W.D.N.Y. Case No. 05-CV-6387)
County of Seneca v. Abbott Laboratories,)
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W.D.N.Y. Case No. 05-CV-6370)
County of St. Lawrence v. Abbott)
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N.D.N.Y. Case No. 05-CV-0479)
County of Saratoga v. Abbott Laboratories,)
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N.D.N.Y. Case No. 05-CV-0478)
County of Steuben v. Abbott Laboratories,)
Inc., et al.)
W.D.N.Y. Case No. 05-CV-6223)
County of Suffolk v. Abbott Laboratories,)
Inc., et al.)
E.D.N.Y. Case No. 03-CV-12257)
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County of Warren v. Abbott Laboratories,)
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Laboratories, Inc., et al.)
N.D.N.Y. Case No. 05-CV-0408)
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Inc., et al.)
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County of Westchester v. Abbott Laboratories, Inc., et al.	)
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W.D.N.Y. Case No. 05-CV-6379	)
County of Yates v. Abbott Laboratories, Inc., et al.	)
W.D.N.Y. Case No. 05-CV-06172	)
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Affidavit of Dr. Sumanth Addanki

June 15, 2009

I. Introduction

A. Qualifications and Assignment

1. I am an economist and a Senior Vice President at NERA Economic Consulting (NERA). I hold a Ph.D. degree in economics from Harvard University and have specialized in the study of industrial organization. My qualifications are summarized in Exhibit 1 and were set out more fully in the Report that I rendered in this matter in March of this year.[1]

2. Counsel for the defendants in this matter asked me to review and respond to the report submitted by Mr. Devor in relation to the allegations in the complaint as they related to reimbursement based on Federal Upper Limits ("FULs").[2]

B. Information Relied Upon

3. This report is based on my professional training and experience, including my experience working in other cases involving allegations of Average Wholesale Price ("AWP") and Wholesale Acquisition Cost ("WAC") manipulation. My staff at NERA and I have reviewed various materials, including data from pricing compendia, public documents and court filings. A list of the materials relied upon in preparing this affidavit is attached as Exhibit 2.[3]

C. Summary of Conclusions

4. Mr. Devor purports to calculate alternative measures of "WAC" and "AWP," but his calculations are neither consistent nor transparent, nor reliable. At their core, being based

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[1] See Expert Report of Dr. Sumanth Addanki, In re: Pharmaceutical Industry Average Wholesale Price Litigation relating to The City of New York et al. v. Abbott Laboratories, Inc., et al., March 18, 2009 ("Addanki Report").

[2] Rule 26 Statement of Harris L. Devor, In re: Pharmaceutical Industry Average Wholesale Price Litigation relating to The City of New York et al. v. Abbott Laboratories, Inc., et al., September 30, 2008, as amended ("Devor Statement"). New York Counties v. Abbott Laboratories, Inc., et al., Revised First Amended Consolidated Complaint, October 5, 2007, and Exhibit B.

[3] For completeness, this exhibit also includes materials relied upon in preparing my affidavit of May 15, 2009.

solely on manufacturers' sales transaction data, his calculations simply reflect alternative (and *ad hoc*) measures of Average Manufacturer Price ("AMP") —a quantity that manufacturers have calculated according to the Centers for Medicare and Medicaid Services' ("CMS's") specifications and provided to CMS since 1991. Thus, his *ad hoc* measure adds no reliable or meaningful information to the data already readily available to CMS. Worse, his "methodology" results in calculated "WACs" and "AWPs" that frequently violate relationships generally understood to hold in the industry: for instance, AWP is generally understood to be greater than WAC, but Mr. Devor's calculated "WAC" is often greater than his calculated "AWP." In addition to this and several other errors, he modifies his calculated measures in various *ad hoc* ways based on subjective judgment. For all of these reasons, and quite apart from the deficiencies in the plaintiffs' theory of causation and harm that I have explained elsewhere, Mr. Devor's calculations are unhelpful, unreliable and should be set aside.

II. Mr. Devor's Analysis is not Reliable

A. Overview

5. I have already mentioned the problem inherent in Mr. Devor's approach in that it seeks to substitute various alternative calculations of AMP as replacements for AWP and WAC. I have also noted elsewhere that AMP—even at 250 percent—has been rejected as a basis for the FUL.[4] Unfortunately, the problems with Mr. Devor's calculations go far beyond these conceptual difficulties. Mr. Devor's approach to determining 'new' FULs ignores many important pieces of information and relevant facts.

[4] See, e.g., the "Addanki Report" and my affidavit of May 15, 2009 in this matter.

6. For example, he apparently makes no use of the available wholesaler data in calculating his AWPs, or even in vetting those calculations.[5] Moreover, he has analyzed only about 13 percent of the NDCs in the relevant GCNs with published prices during the period at issue.[6] Second, although he apparently understands that the prices in a distribution chain will necessarily have a certain hierarchical relationship, the "AWPs" and "WACs" that he calculates, upon which he bases his "but for" FULs, frequently violate this relationship. Third, and perhaps most important, Mr. Devor's analysis does not account for, and he apparently cannot explain, the large number of instances in which CMS had

[5] See, e.g., Deposition of Harris Devor, December 9, 2008 ("Devor Deposition, Vol. 1"), pp. 157-158 ("Q. Are you aware that plaintiffs' counsel in this case has in the discovery record in this case accumulated the transaction data showing the prices at which the three national wholesalers sold to various provider types, were you aware of that? A. Am I aware of that information being provided by the wholesalers? Q. To plaintiffs' counsel in this case? A. I'm not aware of it, I'm not sure it's relevant to me but -- Q. Did you use any of that information in the calculations you did of AWP? A. I just said I wasn't even aware that they had it, so -- Q. So you didn't? A. It was not relevant -- I mean, I had enough information from my understanding of the way this works and my experience as well as from the data that was provided us to be able to calculate the AWP. I did not need to look at wholesaler invoices.").

[6] Mr. Devor analyzed, based on his work files, 187 NDCs, although he has exhibits for only 164. Based on my analysis of these nine products there were over 1,400 NDCs with active published AWPs, WACs, or DPs between 1997 and 2005. In addition, the drugs Mr. Devor appears to have analyzed, apparently at the direction of counsel for the plaintiff, include drugs that do not appear on Exhibit B to the complaint, or were included there without a FUL listing. The NDCs like these for which Mr. Devor provides exhibits include: 00005317223, 00005317231, 00005317234, 00054485325, 00054806321, 00093002901, 00093002910, 00172419810, 00172419860, 00172419864, 00172419870, 00172419880, 00172439018, 00172640544, 00172640549, 00182180701, 00182180705, 00182180710, 00182180789, 00182196710, 00182198801, 00182198810, 00182268789, 00182801024, 00182801026, 00228266111, 00228271111, 00364079401, 00364263298, 00364263301, 00364263305, 00364263306, 00364273401, 00364273402, 00378004701, 00378004710, 00378045701, 00378045705, 00378045710, 00378105401, 00378105405, 00378325201, 00378325205, 00378325291, 51079038620, 51079038619, 51079038621, 51079038624, 51079038656, 51079038699, 51079080219, 51079080220, 51079087920, 51079088120, 51079088121, 51079088156, 51079095320, 00536451305, 00555058210, 00591067101, 00641400186, 00641400189, 00781122813, 00781123310, 00781137213, 00781140401, 00781140413, 00781188301, 00781188305, 00781188310, 00781188313, 00781188360, 00781293801, 00781293850, 00781915093, 49502030317, 49502033317, 49502069703, 49502069730, 49502069733, 49502069760, 49884041301, 49884041310, 49884049505, 49884054401, 49884054402, 49884054405, 49884054410, 49884059401, 49884059410, 52544076005, 52544076060, 58177023804, 58177023808, 58177023811, 58177023812, 59930150006, 59930150008, 59930154901, and 59930156001. Devor Deposition, Vol. 1, p. 137 ("Q. There are generic drugs, Warrick drugs for which you have prepared exhibits but for which there is no FUL shown in Exhibit B to plaintiffs' complaint. Do you know why you would have prepared exhibits for those drugs? A. Again, the -- I believe the list of drugs that we were asked to do the analysis on was provided by counsel and I made no effort to reconcile that list to the drugs that might have been included in the complaint, nor did I deem that necessary based on what I was asked to do.").

published prices available to it from which it could have produced a lower FUL—from these very defendants and for these very NDCs—but which it elected not to use.

B. Mr. Devor's calculations violate expected relationships

7. Mr. Devor writes in his Rule 26 Statement that "AWP is defined as an average price which a wholesaler (or distributor) would charge a pharmacy (or other provider) for a particular product."[7] Mr. Devor also states that "WAC is defined as the price paid by a wholesaler (or distributor) to a manufacturer for the purchase of a particular product."[8] In calculating his proposed measure of AWP, Mr. Devor says that he will include sales data "relating to both direct (i.e., directly between the manufacturers and the retail classes of trade) and indirect (i.e., between wholesalers or distributors and the retail classes of trade) transactions from the manufacturers' transactional data."[9] AMP is an average of a manufacturer's sales prices, to be calculated in a manner prescribed by CMS, for submission to, and use by, the Medicaid system.

8. The ordinal relationships between and among these measures are relatively straightforward: the AWP is expected to be greater than the WAC, and the WAC is expected to be no less than the AMP. Mr. Devor confirmed his understanding of these relationships, stating in his deposition that he would expect AWP to be greater than

[7] Devor Statement, ¶ 15. It is well-documented that AWP was not defined in this manner but was widely described as an undiscounted benchmark. See Exhibit 2 for a partial list of public documents touching on the meaning of AWP and demonstrating the difference between AWP and transaction prices.

[8] Devor Statement, ¶ 16.

[9] Devor Statement, ¶ 185. The inclusion of direct sales to pharmacies appears to be in direct conflict with his definition of AWP as a price between distributors and pharmacies—as those sales are priced by the manufacturer and are, hence, "direct" sales.

WAC in the majority of instances.[10] Mr. Devor also testified that he would expect AWP to be greater than AMP, and WAC to be similar to AMP.[11]

9. In fact, however, Mr. Devor's calculated "AWPs" and "WACs" frequently violate these expected relationships. In as much as 60 percent of the instances (by NDC-quarter) in which Mr. Devor calculated both an "AWP" and a "WAC," his calculated "WAC" exceeded his "AWP"! For nearly ***all*** (about 92 percent) of the NDCs for which he produces exhibits and reports both an "AWP" and a "WAC", he calculates a "WAC" greater than the "AWP" for at least one quarter. See Exhibit 3.

10. Equally at odds with reality, his calculated "WACs" and "AWPs" are frequently less than his AMPs. In about a third (about 34 percent) of the instances (by NDC-quarter) in which Mr. Devor reported both his calculated "AWP" and the AMP, the calculated amount for his "AWP" was less than the AMP—which makes no economic sense. Moreover, for about 88 percent of the NDCs in Mr. Devor's exhibits, where the relationship between his calculated "AWP" and the AMP can be observed, his "AWP" is

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[10] Devor Deposition, Vol. 1, pp. 165-167 ("Q. But you don't know in what percentage of the case the calculated WACs turned out to be higher than the calculated AWPs? MS. CICALA: Objection, asked and answered. A. I see no benefit that I would have gotten from calculating the percentage of times that that occurred. Q. So the answer is no? A. The answer is no. Q. Are those instances in which the calculated WAC turns out to be higher than the AWP, would you characterize those as unexpected results? MS. CICALA: Object to form. A. I would -- you can characterize them any way you want. I mean, if you go with the presumption that entering into the exercise you believe that the provider is going to pay more for the good than the wholesaler, then you would expect AWP to be greater. So when it doesn't happen, it may not -- it's not impossible, but it may in fact occur. I don't know how to answer that question other than that. Q. So would you characterize that as an unexpected result? A. I wouldn't characterize it as an unexpected result. Saying it is going to happen more often than not doesn't necessarily mean when it doesn't happen that it is unexpected, it just means that it's not within the majority of the cases.").

[11] Devor Deposition, Vol. 1, pp. 170-171 ("Q. How would you have expected the AWPs and WACs you calculated to compare with the AMPs that the manufacturers actually reported to CMS? (Question read) A. I would, based on my understanding of the definition of AMPs, I would have expected the AMPs and the WACs to be somewhat close or similar. Q. And relative -- you would have expected then that AWP would have been higher than, generally speaking, AMPs? MS. CICALA: Objection, mischaracterizes the witness's testimony. A. I would have if you carry that forward and apply it to the AWPs as opposed to the WACs. Since I would believe that the AWPs would be greater than the WACs and I would expect the WACs and the AMPs to be similar, then I would think the AWP would, most cases, be greater than the AMPs.").

less than the AMP for at least one quarter. See Exhibit 4. The results for his calculated "WACs" yield similar results. See Exhibit 5.

11. Even more troubling, perhaps, Mr. Devor calculates and reports several negative "AWPs" and "WACs". In about 11 percent of the instances (by NDC-quarter) in which Mr. Devor calculated either an "AWP" or a "WAC", at least one of his calculated amounts was negative. About 43 percent of the NDCs for which he calculated a "WAC" or "AWP" had at least one quarter in which one of these values was negative. It is absurd, of course, to suppose that AWPs or WACs could be negative. See Exhibit 6.

12. Mr. Devor then arbitrarily replaces these negative values with what he terms a "proxy" value, which appears to be the last positive figure he calculated. Even more egregious, Mr. Devor replaces his calculated values with "proxies" when he finds what he calls an "outlier".[12] In each of the latter cases, where Mr. Devor used a proxy in place of a positive number he had calculated, that calculated positive number was large enough to imply a FUL greater than the published FUL. See Exhibit 7. Moreover, Mr. Devor did not provide any explanation or rule regarding the method used to determine what constituted an "outlier" and, when questioned about it, was unable to enunciate his standard for deciding what was, and what was not, an "outlier".[13]

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[12] Devor Deposition, Vol. 1, pp. 141-142 ("Q: Is there any other case other than when you calculate a negative WAC or AWP that you use a proxy? A: Other than when it is negative? Q: Yes. A: Yes, well, the description, at least, I mean, there is a lot of exhibits here, so I would have to go through it, but the description indicates also if there was an outlier. So, for instance, let's assume the AWP was -- or the WAC was two dollars, $1.98, $1.80 whatever, and then all of a sudden it was $453. Well, obviously with respect to that data there is something wrong with that and that would distort the whole analysis. So in that case, and I can't recall whether we actually had those cases, we may have, given how much, you know, how many drugs and how many periods we analyzed, there could have been one or two. With respect to those we would have also used a proxy which I believe in both cases would have been the calculated AWP or WAC just prior to that, I believe.").

[13] Devor Deposition, Vol. 1, p. 143 ("Q: What was your standard for determining when something was an outlier and that you would use a proxy? A: I think that was only if it was – the answer -- I don't even remember having any so it is hard for me to say my standard, but if you point me to one I would be glad to comment on it as to why it got taken out.").

C. Mr. Devor's Analysis is Inconsistent with the Observed Published Prices and FULs

13. Mr. Devor states that the published AWPs and WACs of the defendants "appear to have been exaggerated".[14] He concludes that FULs would have been lower if the defendants had published the AWPs and WACs he calculates. This conclusion completely ignores the fact that many of the actual published prices, which he reports on his own exhibits, would have produced a lower FUL had CMS simply used them. Indeed, in some instances, his calculated "AWP" or "WAC" is higher than the one actually published. See Exhibit 8.

14. For about 46 percent of the NDC-quarter combinations for which Mr. Devor reports a published WAC and FUL, the published WAC was already low enough to have produced a lower FUL, had CMS used it. Approximately two-thirds of the NDCs reported on by Mr. Devor, where such a comparison is possible, exhibit this for at least one quarter.[15] See Exhibit 9. Oddly, there are even instances in which Mr. Devor ignores the fact that the published price is already low enough to have produced a lower FUL and goes on to calculate a *higher* one on which to set the FUL. See Exhibit 8.

15. Mr. Devor's statement offers no explanation for why CMS proceeded in the manner that it did. When questioned, he indicated that understanding and attempting to apply CMS's actual practices in setting FULs was beyond the scope of his assignment.[16]

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[14] Devor Statement, ¶ 8 ("Accordingly, the determination of a FUL by CMS would have been influenced, during the relevant timeframe, by what appear to have been exaggerated prices, thereby having increased the cost of reimbursement incurred by the State of New York.").

[15] There are even some instances where the published AWP in Mr. Devor's exhibits is low enough to have produced a lower FUL. See Exhibit 9, notes.

[16] See, e.g., Devor Deposition, Vol. 1, pp. 99-100 ("Q. What did you do in your analysis to determine whether a particular manufacturer's drugs that are the subject of your analysis in the Rule 26 statement were a therapeutic equivalent? MS. CICALA: Objection to form. A. Let's be clear about what I did, maybe, again, because I'm not sure you are -- maybe we are passing each other here. You keep coming back and asking me about things that

D. Inconsistencies with a "non-discretionary FUL"

16. It is clear that CMS exercised discretion in setting the FUL and, in so doing, did not adhere to a simple and strict application of the regulations. In addition to having given no attention to CMS's interpretation of the FUL regulations and how CMS actually went about setting the FULs in practice, Mr. Devor appears to have given no serious consideration to any of the elements of the FUL regulations apart from multiplying by 150 percent.[17]

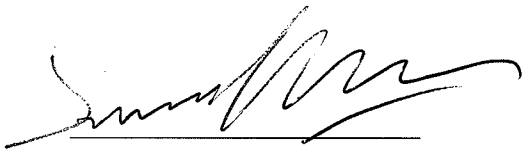
CMS did or didn't do, and alls I did was take their number and compare it to what I computed based on the reported numbers of the manufacturers. So I computed a FUL based on the reporting of the 13 manufacturers for the nine drugs. Your question seems to go to what did I do to look at therapeutic equivalent. I'm telling you what I did. I mean, I just looked at their -- I estimated what their WAC was, I estimated what their AWP was, to the extent it was provided I looked at their AMP numbers, and I computed a Harris Devor FUL based on 150 percent of that number in the event that the court finds that relevant for its analysis. That's what I did."), p. 130 ("Q: … Why did you calculate AWPs and WACs when there was no FUL in effect? A. The scope of our assignment was to compute an average AWP and WAC, sort of a 12-month rolling average, AWP and WAC for all the drugs at issue in this case. The list of drugs at issue in this case was given to me and I did it for that. That's solely what I was asked to do."), pp. 91-92 ("Q. You don't know in practice how CMS interpreted the package size requirement in the regulation, do you? A. I don't, I don't know that it was relevant to what I was doing."), pp. 102-103 ("Q. Do you know whether Warrick's albuterol inhaler was A rated? A. Was A rated? Q. Yes. A. No. Q. Do you know what A rated means? A. No. Q. Do you know how CMS determined what was considered to be therapeutic equivalent, a therapeutic equivalent? A. Again, I mean, I hate to drag this deposition out, but once again, my work was based on computing estimated WACs -- estimated average WACs and AWPs for the subject defendants for these drugs, not what CMS did to compute its FULs. I have said that now six or seven times. Q. Maybe you'll say it again now, but do you know whether CMS had a practice of setting FULs on the basis of other than therapeutically equivalent drugs? A. It was beyond -- I do not know and it was beyond the scope of what I was asked to do."), and p. 782 ("Q. And your methodology for calculating estimated federal upper limits doesn't incorporate regulatory criteria with respect to package sizes, available therapeutic equivalent and other manufacturers' published prices, correct? MS. CICALA: Object to form. A. That is correct, and it is not intended to convey that it does, it is merely intended to take 150 percent of the estimated WAC and the estimated AWP as well as the AMP information.").

[17] Mr. Devor did testify in his deposition that he had seen and read the regulations before and that he knew that CMS did not always use the lowest published price. See, e.g., Devor Deposition, Vol. 1, pp. 28-29 ("Q. … Were you familiar with how CMS established federal upper limits before you began your work in connection with this case? A. I had some idea by virtue of having worked in similar litigation in other states, so I was somewhat aware of what a FUL was and in essence how it was computed. Q. Did you do anything in connection with this case to familiarize yourself with how CMS established federal upper limits? A. Well, I understood and I believe I have in my report the -- how a FUL is presumably determined. Q. And that's according to a federal regulation, right? A. I believe so. Q. Did you read 42 CFR Section 447.332, the FUL, the federal FUL regulation? A. Yes, it's referenced in paragraph 12 in my report. Q. Is that something you rely on in connection with the opinions that are set forth in your Rule 26 statement? A. It is -- it forms -- it forms a piece of the knowledge that I use to compute FULs.") and p. 62 ("Q. You would agree with me, wouldn't you, that based on the discovery record in this litigation, discovery that you have reviewed, that CMS doesn't always set the FUL on the basis of the lowest published available price, right? A. As I believe I said before, that I thought there were instances where they did not, I think I was aware of that.").

17. The FUL regulations say that the FUL should be set on NDCs with a package size of 100 or, alternatively, the most common package size for the product. And, in fact, CMS's transmittals indicate the package size used in setting the FUL. Many of the defendant NDCs on which Mr. Devor reports are not the appropriate package size for setting the FUL. About half of the NDCs, and about half of the quarters permitting comparisons, reported on by Mr. Devor were of a package size inconsistent with that reported on the CMS transmittal as having been used to set the FUL. See Exhibits 10A and 10B.

18. In addition, many of the calculations he makes appear to be for NDCs which were obsolete according to the compendia, as presumably were their price postings, for at least part of the relevant period. Mr. Devor testified that he did not utilize the compendia's obsolete dates in his analysis.[18] Thus, as he did not end published prices upon the indication of obsolescence, he includes analyses for quarters where an NDC is, according to the compendia, obsolete (or inactive or discontinued or terminated). For example, had Mr. Devor simply consulted the most recently posted obsolete dates in the First DataBank ("FDB") data, he would have found that for about 35 percent of the NDCs for which he calculates alternative FULs, his calculations continue beyond the NDC's obsolete date. See Exhibit 11. Mr. Devor has apparently ignored the issue of obsolescence.

[18] Deposition of Harris Devor, December 11, 2008 ("Devor Deposition, Vol. 3"), pp. 767-768 ("Q. Did you in your analysis -- or were obsolete dates for subject drugs, or the other drugs you were looking at if they weren't subject drugs, were obsolete dates relevant to your analysis? A. Only to the extent that because they were obsolete dates, the data -- wouldn't have had any data for those periods of time. So if the data that your client provided me had data that related to that period of time, it entered into the computation. That's what was relevant. AWPs and WACs were based -- that I computed were based on the data that your client gave us. Q. You also may have had data from First DataBank, however, correct? MS. CICALA: Objection, asked and answered. A. But I didn't compute those. I thought we were talking about my computations and the exercise I did. Q. So if the first First DataBank data that you got from whatever means indicated an obsolete date for a product, you did not take that into account in your computations, correct? A. My computations, my computations merely took into account the data that was supplied by your client which enabled me to compute using the same data an estimated WAC and AWP. Those are the only computations I did.").



Sumanth Addanki

6.15.09

Date

EXHIBIT 1

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SUMANTH ADDANKI
SENIOR VICE PRESIDENT

Education

Harvard University
Ph.D., Economics, 1986

Birla Institute of Technology and Science, India
M.A. (Hons.), Economics, 1980

Professional Experience

	NERA Economic Consulting
1986-	Senior Vice President (current position)
	New York University, Robert F. Wagner Graduate School of Public Service
1997	Adjunct Assistant Professor of Public and Health Administration
	National Bureau of Economic Research Inc.
1981-1986	Research Associate and Computer Manager
	Harvard University
1981-1985	Instructor in Economics, Teaching Fellow, and Assistant Head Tutor
	National Council of Applied Economic Research, India
1980	Research Associate

Honors and Professional Activities

Associate Editor, *Antitrust Magazine*, 2001 - 2002

Vice Chair, Economics Committee at Antitrust Section of ABA, 1999 - 2000

Danforth Center Award for Excellence in Teaching, Harvard University, 1983

Testimony (2004 – 2008)

In re Pharmaceutical Industry Average Wholesale Price Litigation: The City of New York v. Abbott Laboratories, Inc., et al., United States District Court for the District of Massachusetts, MDL No. 1456, CA No. 01-12257-PBS (Deposition Testimony) November 2008 and April 2009

State of Missouri, ex rel. Jeremiah W. (Jay) Nixon, Attorney General and Missouri Department of Social Services, Division of Medical Services v. Dey, Inc., et al and Warrick Pharmaceuticals Corporation, Schering-Plough Corporation, Schering Corporation, In the Circuit Court of the City of St. Louis State of Missouri, Case No. 054-1216 Division: 2. October 2008

State of Wisconsin v. Amgen, Inc., Abbott Laboratories, AstraZeneca Pharmaceuticals, LP, AstraZeneca, LP, Aventis Pharmaceuticals, Inc. Baxter Healthcare Corporation, Ben Venue Laboratories, Inc. et al., The Circuit Court for Dane County in the State of Wisconsin, Case No. 04-CV-1709 (Deposition Testimony) May 2008

The Commonwealth of Massachusetts v. Mylan Laboratories, Inc. IVAX Corporation, Warrick Pharmaceutical Corporation, Watson Pharmaceuticals, Inc. Schein Pharmaceutical, Inc., Teva Pharmaceuticals USA, Inc., PAR Pharmaceutical, Inc., Purepac Pharmaceutical Co, and Roxane Laboratories, Inc., U.S. District for the District of Massachusetts, Civil Action No. 03-11865-PBS (Deposition Testimony). April 2008

Discover Financial Services, et al. v. *Visa U.S.A. Inc.,* et al., U.S. District Court for the Southern District of New York, Civil Action No 04-CF-7844 (BSJ) (Deposition Testimony). December 2007.

State of Alabama v. Abbott Laboratories, Inc., et al., In the Circuit Court of Montgomery County, Alabama, CV-05-219 (Deposition Testimony). November 2007.

Dynax Corporation v. Chemguard, Inc., U.S. District Court for the Southern District of New York, Index: 06-CIV-5143 (CM)(ECF CASE) (Deposition Testimony). June 2007

State of Colorado, et al. *v. Warner Chilcott Holdings Company III, Ltd,* et al., U.S. District Court for the District of Columbia, Civil Action No 1:05CV02182 (CKK) (Deposition Testimony). August 2007

Novartis Corporation, Novartis Pharmaceuticals Corporation, and Novartis International AG v. Teva Pharmaceuticals USA, Inc., U.S. District Court for the District of New Jersey, Civil Action Nos. 04-4473 and 06-1130 (HAA)(MF) (Deposition Testimony). February 2007

In re Pharmaceutical Industry Average Wholesale Price Litigation (MDL 1456), U.S. District Court for the District of Massachusetts, Civil Action No. 01-12257-PBS. December 2006

Briant Chun-Hoon and Carlo Guglielmino v. McKee Foods Corporation, a Tennessee Corporation; and Does 1 through 100, inclusive, U.S. District Court for the Northern District of California, Case No. C05-00620 VRW (Deposition Testimony). March 2006

XIOtech Corporation v. Compellent Technologies, Inc., Michael Markovich, Russell B. Taddiken, Scott A. Winslow, Kristofer M. Zuber, District Court for the State of Minnesota, Fourth Judicial District, Court File No.: 04-5065 (Deposition Testimony). March 2006

Medtronic Minimed, Inc., v. Smiths Medical MD, Inc., U. S. District Court for the District of Delaware, Civil Action No. 03-776-KAJ (Deposition Testimony). February 2006

Papers and Publications (1998 – 2008)

"Patent Settlement Agreements" with Alan J. Daskin, Chapter 85, Volume 3, in *Issues in Competition Law and Policy*, published by American Bar Association, Section of Antitrust Law, August, 2008.

"Who Defines the Relevant Market—The Core Customer or Marginal One?" with Alan Daskin, *Antitrust Insights*, National Economic Research Associates, Inc., Summer 2008.

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Exhibit 2

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Exhibit 3
Counts of NDC-Quarters and NDCs for which Mr. Devor's AWP is Lower than His WAC

	Number of NDC-Qtrs for which:			Number of NDCs for which:			
	Estimated AWP is Less than Estimated WAC	Estimated AWP & WAC are Both Reported	Share of NDC-Quarters	Estimated AWP is Ever Less than Estimated WAC	Estimated AWP & WAC are Ever Reported for the Same Qtr	Share of NDCs	Total Number of NDCs with Exhibits
	------(Number of NDC-Quarters)------		---(Percent)--- [(a) / (b)]	----------(Number of NDCs)----------		----(Percent)---- [(d) / (e)]	
	(a)	(b)	(c)	(d)	(e)	(f)	(g)
Barr	46	52	88.5 %	2	2	100.0 %	2
Dey	75	150	50.0	8	8	100.0	9
Ethex	-	-		-	-		4
Ivax	213	304	70.1	13	13	100.0	23
Mylan	351	444	79.1	23	24	95.8	25
Par	127	180	70.6	7	9	77.8	10
Purepac	181	202	89.6	7	7	100.0	7
Roxane	19	34	55.9	3	3	100.0	4
Sandoz	150	295	50.8	17	18	94.4	25
Schering	46	114	40.4	6	6	100.0	6
Teva	176	286	61.5	11	11	100.0	11
Watson	142	467	30.4	23	29	79.3	31
Wyeth	-	-		-	-		7
Total:	**1,526**	**2,528**	**60.4 %**	**120**	**130**	**92.3 %**	**164**

Notes:
- Shares are displayed rounded to the nearest tenth of a percent.
- Summary is based on a comparison of the variables "Estimated WAC", as reported in exhibits with the subheader "Computation of FUL Based on WAC", and "Estimated AWP", as reported in exhibits with the subheader "Computation of FUL Based on AWP".
- The Estimated AWP and the Estimated WAC were only compared for combinations of NDC and quarter for which Mr. Devor provided a non-zero, non-missing value for both variables.

Source(s):
- Mr. Devor's Electronic Exhibits.

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Exhibit 4
Counts of NDC-Quarters and NDCs for which Mr. Devor's AWP is Less than AMP

	Number of NDC-Qtrs for which:			Number of NDCs for which:			
	Estimated AWP is Less than AMP	Estimated AWP & AMP are Both Reported	Share of NDC-Quarters	Estimated AWP is Ever Less than AMP	Estimated AWP & AMP are Ever Reported for the Same Qtr	Share of NDCs	Total Number of NDCs with Exhibits
	------(Number of NDC-Quarters)------		----(Percent)---- [(a) / (b)]	----------(Number of NDCs)----------		-----(Percent)----- [(d) / (e)]	
	(a)	(b)	(c)	(d)	(e)	(f)	(g)
Barr	15	46	32.6 %	2	2	100.0 %	2
Dey	31	83	37.3	5	5	100.0	9
Ethex	17	49	34.7	2	4	50.0	4
Ivax	119	342	34.8	17	18	94.4	23
Mylan	136	442	30.8	22	24	91.7	25
Par	53	183	29.0	8	9	88.9	10
Purepac	21	109	19.3	4	7	57.1	7
Roxane	-	-		-	-		4
Sandoz	171	374	45.7	18	19	94.7	25
Schering	43	87	49.4	5	6	83.3	6
Teva	86	286	30.1	11	11	100.0	11
Watson	127	348	36.5	25	28	89.3	31
Wyeth	-	36	-	-	2	-	7
Total:	**819**	**2,385**	**34.3 %**	**119**	**135**	**88.1 %**	**164**

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Exhibit 4
Counts of NDC-Quarters and NDCs for which Mr. Devor's AWP is Less than AMP

Notes:
- Shares are displayed rounded to the nearest tenth of a percent.
- Of the 2,670 total instances where, for a given NDC and quarter, Mr. Devor provides a non-zero, non-missing value for both the AMP and the Estimated AWP or WAC, 1,133 (42.4%) include an Estimated AWP or WAC that is lower than the AMP.
- Of the 136 NDCs for which Mr. Devor ever provides, in the same quarter, a non-zero, non-missing value for both the AMP and the Estimated AWP or WAC, 125 (91.9%) include an Estimated AWP or WAC that is lower than the AMP for at least one quarter.
- Summary is based on a comparison of the variables "Estimated WAC", "Estimated AWP", and "AMP", which were respectively obtained from exhibits with the subheaders "Computation of FUL Based on WAC", "Computation of FUL Based on AWP", and "Computation of FUL Based on AMP".
- The Estimated AWP and Estimated WAC were only compared with the AMP for combinations of NDC and quarter for which Mr. Devor provided a non-zero, non-missing value for both the AMP and the AWP or WAC.

Source(s):
- Mr. Devor's Electronic Exhibits.

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Exhibit 5
Counts of NDC-Quarters and NDCs for which Mr. Devor's WAC is Less than AMP

	Number of NDC-Qtrs for which:			Number of NDCs for which:			
	Estimated WAC is Less than AMP	Estimated WAC & AMP are Both Reported	Share of NDC-Quarters	Estimated WAC is Ever Less than AMP	Estimated WAC & AMP are Ever Reported for the Same Qtr	Share of NDCs	Total Number of NDCs with Exhibits
	-----(Number of NDC-Quarters)-----		---(Percent)--- [(a) / (b)]	---------(Number of NDCs)---------		----(Percent)---- [(d) / (e)]	
	(a)	(b)	(c)	(d)	(e)	(f)	(g)
Barr	10	48	20.8 %	2	2	100.0 %	2
Dey	21	83	25.3	5	5	100.0	9
Ethex	-	-		-	-		4
Ivax	75	310	24.2	11	13	84.6	23
Mylan	102	680	15.0	20	25	80.0	25
Par	50	197	25.4	9	9	100.0	10
Purepac	-	109	-	-	7	-	7
Roxane	-	-		-	-		4
Sandoz	147	295	49.8	17	18	94.4	25
Schering	55	87	63.2	4	6	66.7	6
Teva	68	286	23.8	11	11	100.0	11
Watson	192	317	60.6	26	27	96.3	31
Wyeth	-	-		-	-		7
Total:	**720**	**2,412**	**29.9 %**	**105**	**123**	**85.4 %**	**164**

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Exhibit 5
Counts of NDC-Quarters and NDCs for which Mr. Devor's WAC is Less than AMP

Notes:
- Shares are displayed rounded to the nearest tenth of a percent.
- Of the 2,670 total instances where, for a given NDC and quarter, Mr. Devor provides a non-zero, non-missing value for both the AMP and the Estimated AWP or WAC, 1,133 (42.4%) include an Estimated AWP or WAC that is lower than the AMP.
- Of the 136 NDCs for which Mr. Devor ever provides, in the same quarter, a non-zero, non-missing value for both the AMP and the Estimated AWP or WAC, 125 (91.9%) include an Estimated AWP or WAC that is lower than the AMP for at least one quarter.
- Summary is based on a comparison of the variables "Estimated WAC", "Estimated AWP", and "AMP", which were respectively obtained from exhibits with the subheaders "Computation of FUL Based on WAC", "Computation of FUL Based on AWP", and "Computation of FUL Based on AMP".
- The Estimated AWP and Estimated WAC were only compared with the AMP for combinations of NDC and quarter for which Mr. Devor provided a non-zero, non-missing value for both the AMP and the AWP or WAC.

Source(s):
- Mr. Devor's Electronic Exhibits.

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Exhibit 6
Counts of NDC-Quarters and NDCs for which Mr. Devor's AWP or WAC is Negative

	Number of NDC-Quarters for which:						Number of NDCs for which:						Total Number of NDCs with Exhibits
	Estimated AWP is Negative	Estimated AWP is Reported	Share of NDC-Quarters	Estimated WAC is Negative	Estimated WAC is Reported	Share of NDC-Quarters	Estimated AWP is Ever Negative	Estimated AWP is Ever Reported	Share of NDCs	Estimated WAC is Ever Negative	Estimated WAC is Ever Reported	Share of NDCs	
	-----(Number of NDC-Qtrs)-----		---(Percent)--- [(a) / (b)]	-----(Number of NDC-Qtrs)----		----(Percent)---- [(d) / (e)]	------(Number of NDCs)-----		---(Percent)--- [(g) / (h)]	------(Number of NDCs)-----		----(Percent)---- [(j) / (k)]	
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)
Barr	11	52	21.2 %	13	54	24.1 %	2	2	100.0 %	2	2	100.0 %	2
Dey	-	151	-	3	159	1.9	-	8	-	3	9	33.3	9
Ethex	-	49	-	-	-		-	4	-	-	-		4
Ivax	4	372	1.1	22	312	7.1	2	23	8.7	5	13	38.5	23
Mylan	4	453	0.9	22	691	3.2	3	24	12.5	6	25	24.0	25
Par	-	183	-	25	222	11.3	-	9	-	4	10	40.0	10
Purepac	1	203	0.5	1	203	0.5	1	7	14.3	1	7	14.3	7
Roxane	-	36	-	1	44	2.3	-	3	-	1	4	25.0	4
Sandoz	19	379	5.0	45	295	15.3	6	19	31.6	14	18	77.8	25
Schering	1	122	0.8	2	114	1.8	1	6	16.7	2	6	33.3	6
Teva	3	295	1.0	25	286	8.7	3	11	27.3	5	11	45.5	11
Watson	27	533	5.1	135	491	27.5	11	30	36.7	22	29	75.9	31
Wyeth	-	39	-	-	-		-	3	-	-	-		7
Total:	**70**	**2,867**	**2.4 %**	**294**	**2,871**	**10.2 %**	**29**	**149**	**19.5 %**	**65**	**134**	**48.5 %**	**164**

Notes:
- Shares are displayed rounded to the nearest tenth of a percent.
- Of the 3,210 total instances where, for a given NDC and quarter, Mr. Devor provides a non-zero, non-missing value for the Estimated AWP or WAC, 339 (10.6%) include a negative Estimated AWP or WAC.
- Of the 153 NDCs for which Mr. Devor ever provides a non-zero, non-missing value for the Estimated AWP or WAC, 66 (43.1%) include an Estimated AWP or WAC that is negative for at least one quarter.
- Summary is based on the variables "Estimated WAC", as reported in exhibits with the subheader "Computation of FUL Based on WAC", and "Estimated AWP", as reported in exhibits with the subheader "Computation of FUL Based on AWP".
- The Estimated AWP and the Estimated WAC were only summarized for combinations of NDC and quarter for which Mr. Devor provided a non-zero, non-missing value for each variable.

Source(s): - Mr. Devor's Electronic Exhibits.

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Exhibit 7
Instances in which Mr. Devor Proxies for a Non-Negative Calculated Value of AWP or WAC

Exhibit Number	NDC	Drug Information	Company	Start Date	End Date	'Price' Type	Taken from Mr. Devor's Exhibit: Published 'Price'	Estimated 'Price'	Proxy 'Price'	Published FUL	FUL Based on Proxy 'Price'	FUL Based on Estimated 'Price'	Difference Between Published FUL & FUL Based on Estimated 'Price'
							(Dollars)						
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	[(i) * 1.5] (m)	[(k) - (m)] (n)
Exhibit #16.68 - CORRECTED	52544033305	LORAZEPAM 1 MG TABLET	Watson	07/01/01	09/30/01	AWP	$ 405.24	$ 14,861.44	$ 94.47	$ 285.90	$ 141.71	$ 22,292.16	$ (22,006.26)
Exhibit #16.74 - CORRECTED	52544046301	METOPROLOL 100 MG TABLET	Watson	07/01/03	09/30/03	AWP	80.10	107.23	0.54	9.14	0.81	160.85	(151.71)
Exhibit #16.10 - CORRECTED	00364263305	RANITIDINE 150 MG TABLET	Watson	10/01/01	12/31/01	WAC	44.44	7,371.23	38.70	170.50	58.05	11,056.84	(10,886.34)
Exhibit #16.16 - CORRECTED	00364273401	ENALAPRIL MALEATE 20 MG TAB	Watson	04/01/02	06/30/02	WAC	104.30	3,123.11	44.31	-	66.47	4,684.67	(4,684.67)
Exhibit #16.19 - CORRECTED	00364273402	ENALAPRIL MALEATE 20 MG TAB	Watson	07/01/02	09/30/02	WAC	990.89	13,768.28	258.46	-	387.69	20,652.42	(20,652.42)
Exhibit #16.64 - CORRECTED	52544033301	LORAZEPAM 1 MG TABLET	Watson	04/01/00	06/30/00	WAC	-	1,450.71	11.66	66.84	17.49	2,176.06	(2,109.22)
Exhibit #16.64 - CORRECTED	52544033301	LORAZEPAM 1 MG TABLET	Watson	07/01/00	09/30/00	WAC	-	1,613.47	11.66	66.84	17.49	2,420.21	(2,353.37)
Exhibit #16.70 - CORRECTED	52544033310	LORAZEPAM 1 MG TABLET	Watson	10/01/00	12/31/00	WAC	-	15,040.70	67.93	571.80	101.90	22,561.04	(21,989.24)
Exhibit #16.79 - CORRECTED	52544074601	CLONAZEPAM 0.5 MG TABLET	Watson	01/01/03	03/31/03	WAC	20.18	136,839.23	10.54	24.55	15.81	205,258.85	(205,234.30)
Exhibit #16.79 - CORRECTED	52544074601	CLONAZEPAM 0.5 MG TABLET	Watson	04/01/03	06/30/03	WAC	20.18	141,215.12	10.54	24.55	15.81	211,822.68	(211,798.13)
Exhibit #16.79 - CORRECTED	52544074601	CLONAZEPAM 0.5 MG TABLET	Watson	07/01/03	09/30/03	WAC	20.18	3,032.33	10.54	24.55	15.81	4,548.50	(4,523.95)
Exhibit #16.79 - CORRECTED	52544074601	CLONAZEPAM 0.5 MG TABLET	Watson	10/01/03	12/31/03	WAC	20.18	3,244.25	10.54	24.55	15.81	4,866.38	(4,841.83)
Exhibit #16.91 - CORRECTED	52544076060	RANITIDINE 150 MG TABLET	Watson	01/01/04	03/31/04	WAC	8.53	537.64	0.34	20.47	0.51	806.46	(785.99)

Notes: - Dollars are displayed rounded to the nearest penny.
- Summary is based on a comparison of the variables "Estimated WAC", "Estimated AWP", and "Proxy", which were obtained from exhibits with the subheaders "Computation of FUL based on WAC" and "Computation of FUL based on AWP".
- The analysis is restricted to instances where there is a positive value for the "Proxy" and there is a positive value for the "Estimated AWP" or "Estimated WAC".
- Drug information is obtained from the second subheader of Mr. Devor's respective exhibit.

Source(s): - Mr. Devor's Electronic Exhibits.

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Exhibit 8
Instances in which Mr. Devor Calculates an Estimated WAC Greater than the Published WAC

				Taken from Mr. Devor's Exhibit								
Exhibit Number	NDC	Drug Information	Company	Start Date	End Date	Estimated WAC	Proxy WAC	Published WAC	Difference Between Published WAC and Estimated WAC[1]	FUL Based on Estimated WAC	Published FUL	FUL Based on Published WAC
						(Dollars)						[(i) * 1.5]
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)
Exhibit #8.31 - CORRECTED	00172439018	ALBUTEROL 90 MCG INHALER	Ivax	07/01/04	09/30/04	$ 7.14	$	$ 3.50	$ (3.64)	$ 10.71	$ 15.00	$ 5.25 *
Exhibit #8.31 - CORRECTED	00172439018	ALBUTEROL 90 MCG INHALER	Ivax	10/01/04	12/31/04	5.53		3.50	(2.03)	8.30	15.00	5.25 *
Exhibit #8.31 - CORRECTED	00172439018	ALBUTEROL 90 MCG INHALER	Ivax	01/01/05	03/31/05	4.84		3.50	(1.34)	7.26	15.00	5.25 *
Exhibit #8.31 - CORRECTED	00172439018	ALBUTEROL 90 MCG INHALER	Ivax	04/01/05	06/30/05	3.81		3.50	(0.31)	5.72	5.25	5.25
Exhibit #9.37 - REVISED	51079088120	CLONAZEPAM 0.5 MG TABLET	Mylan	07/01/99	09/30/99	41.07		17.38	(23.69)	61.61	41.46	26.07 *
Exhibit #9.37 - REVISED	51079088120	CLONAZEPAM 0.5 MG TABLET	Mylan	10/01/99	12/31/99	31.33		17.38	(13.95)	47.00	41.46	26.07 *
Exhibit #9.37 - REVISED	51079088120	CLONAZEPAM 0.5 MG TABLET	Mylan	01/01/00	03/31/00	26.33		17.38	(8.95)	39.49	41.46	26.07 *
Exhibit #9.40 - REVISED	51079088121	CLONAZEPAM 0.5 MG TABLET	Mylan	07/01/99	09/30/99	40.63		17.74	(22.89)	60.94	41.46	26.61 *
Exhibit #9.40 - REVISED	51079088121	CLONAZEPAM 0.5 MG TABLET	Mylan	10/01/99	12/31/99	31.59		17.74	(13.85)	47.39	41.46	26.61 *
Exhibit #9.40 - REVISED	51079088121	CLONAZEPAM 0.5 MG TABLET	Mylan	01/01/00	03/31/00	28.84		17.74	(11.10)	43.27	41.46	26.61 *
Exhibit #9.40 - REVISED	51079088121	CLONAZEPAM 0.5 MG TABLET	Mylan	04/01/00	06/30/00	19.28		17.74	(1.54)	28.92	41.46	26.61 *
Exhibit #9.73 - REVISED	51079087920	RANITIDINE 150 MG TABLET	Mylan	01/01/98	03/31/98	64.91		48.80	(16.11)	97.36	-	73.20
Exhibit #9.73 - REVISED	51079087920	RANITIDINE 150 MG TABLET	Mylan	04/01/98	06/30/98	57.32		48.80	(8.52)	85.98	-	73.20
Exhibit #9.73 - REVISED	51079087920	RANITIDINE 150 MG TABLET	Mylan	10/01/98	12/31/98	33.72		28.80	(4.92)	50.59	59.14	43.20 *
Exhibit #10.05 - CORRECTED	49884049501	CLONAZEPAM 0.5 MG TABLET	Par	07/01/03	09/30/03	185.38		18.41	(166.97)	278.08	24.55	27.62
Exhibit #10.05 - CORRECTED	49884049501	CLONAZEPAM 0.5 MG TABLET	Par	10/01/03	12/31/03	255.90		18.41	(237.49)	383.85	24.55	27.62
Exhibit #10.05 - CORRECTED	49884049501	CLONAZEPAM 0.5 MG TABLET	Par	01/01/04	03/31/04	255.90		18.41	(237.49)	383.85	24.55	27.62
Exhibit #10.05 - CORRECTED	49884049501	CLONAZEPAM 0.5 MG TABLET	Par	04/01/04	06/30/04	29.46		18.41	(11.05)	44.19	24.55	27.62
Exhibit #10.05 - CORRECTED	49884049501	CLONAZEPAM 0.5 MG TABLET	Par	07/01/04	09/30/04	33.86		18.41	(15.45)	50.79	24.55	27.62
Exhibit #11.16	00228300311	CLONAZEPAM 0.5MG TABLET	Purepac	07/01/97	09/30/97	48.02		46.31	(1.71)	72.02	-	69.47
Exhibit #11.16	00228300311	CLONAZEPAM 0.5MG TABLET	Purepac	10/01/97	12/31/97	45.47		40.44	(5.03)	68.21	87.02	60.66 *
Exhibit #11.16	00228300311	CLONAZEPAM 0.5MG TABLET	Purepac	01/01/98	03/31/98	41.96		40.44	(1.52)	62.94	87.02	60.66 *
Exhibit #11.16	00228300311	CLONAZEPAM 0.5MG TABLET	Purepac	04/01/98	06/30/98	30.56		20.46	(10.10)	45.84	87.02	30.69 *
Exhibit #11.16	00228300311	CLONAZEPAM 0.5MG TABLET	Purepac	07/01/98	09/30/98	22.98		20.46	(2.52)	34.47	41.46	30.69 *
Exhibit #11.16	00228300311	CLONAZEPAM 0.5MG TABLET	Purepac	10/01/98	12/31/98	20.47		20.46	(0.01)	30.71	41.46	30.69 *
Exhibit #11.16	00228300311	CLONAZEPAM 0.5MG TABLET	Purepac	01/01/00	03/31/00	17.33		16.37	(0.96)	25.99	41.46	24.56 *
Exhibit #11.19	00228300350	CLONAZEPAM 0.5MG TABLET	Purepac	04/01/98	06/30/98	138.34		90.26	(48.08)	207.51	435.10	135.39 *
Exhibit #11.19	00228300350	CLONAZEPAM 0.5MG TABLET	Purepac	07/01/98	09/30/98	93.24		90.26	(2.98)	139.86	207.30	135.39 *
Exhibit #15.13	00093083201	CLONAZEPAM 0.5 MG TABLET	Teva	04/01/98	06/30/98	27.70		23.69	(4.01)	41.55	87.02	35.54 *
Exhibit #16.04 - CORRECTED	00364263298	ALBUTEROL 90 MCG INHALER	Watson	07/01/97	09/30/97	6.67		5.59	(1.08)	10.01	-	8.39
Exhibit #16.04 - CORRECTED	00364263298	ALBUTEROL 90 MCG INHALER	Watson	10/01/97	12/31/97	6.33		5.59	(0.74)	9.50	7.47	8.39
Exhibit #16.04 - CORRECTED	00364263298	ALBUTEROL 90 MCG INHALER	Watson	01/01/98	03/31/98	5.79		5.59	(0.20)	8.68	7.47	8.39
Exhibit #16.10 - CORRECTED	00364263305	RANITIDINE 150 MG TABLET	Watson	10/01/01	12/31/01	7,371.23	38.70	44.44	5.74	58.05	170.50	66.66 *
Exhibit #16.13 - CORRECTED	00364263306	RANITIDINE 150 MG TABLET	Watson	01/01/00	03/31/00	7.74		5.98	(1.76)	11.61	-	8.97
Exhibit #16.13 - CORRECTED	00364263306	RANITIDINE 150 MG TABLET	Watson	04/01/00	06/30/00	6.55		5.98	(0.57)	9.82	-	8.97
Exhibit #16.13 - CORRECTED	00364263306	RANITIDINE 150 MG TABLET	Watson	07/01/00	09/30/00	6.41		5.98	(0.43)	9.61	-	8.97
Exhibit #16.16 - CORRECTED	00364273401	ENALAPRIL MALEATE 20 MG TAB	Watson	04/01/02	06/30/02	3,123.11	44.31	104.30	59.99	66.47	-	156.45
Exhibit #16.16 - CORRECTED	00364273401	ENALAPRIL MALEATE 20 MG TAB	Watson	01/01/04	03/31/04	2,021.46	-	61.00	-	-	91.50	91.50
Exhibit #16.19 - CORRECTED	00364273402	ENALAPRIL MALEATE 20 MG TAB	Watson	07/01/00	09/30/00	1,129.90		990.89	(139.01)	1,694.86	-	1,486.34
Exhibit #16.19 - CORRECTED	00364273402	ENALAPRIL MALEATE 20 MG TAB	Watson	10/01/00	12/31/00	1,056.54		990.89	(65.65)	1,584.80	-	1,486.34
Exhibit #16.19 - CORRECTED	00364273402	ENALAPRIL MALEATE 20 MG TAB	Watson	07/01/02	09/30/02	13,768.28	258.46	990.89	732.43	387.69	-	1,486.34
Exhibit #16.61 - CORRECTED	52544024110	LORAZEPAM 1 MG TABLET	Watson	01/01/05	03/31/05	920.93		359.43	(561.50)	1,381.40	571.80	539.15 *
Exhibit #16.73 - CORRECTED	52544046301	METOPROLOL 100 MG TABLET	Watson	07/01/03	09/30/03	8.07		4.60	(3.47)	12.11	9.14	6.90 *
Exhibit #16.73 - CORRECTED	52544046301	METOPROLOL 100 MG TABLET	Watson	10/01/03	12/31/03	16.72		4.60	(12.12)	25.08	9.14	6.90 *
Exhibit #16.73 - CORRECTED	52544046301	METOPROLOL 100 MG TABLET	Watson	01/01/04	03/31/04	26.46		4.60	(21.86)	39.69	9.14	6.90 *
Exhibit #16.79 - CORRECTED	52544074601	CLONAZEPAM 0.5 MG TABLET	Watson	01/01/03	03/31/03	136,839.23	10.54	20.18	9.64	15.81	24.55	30.27
Exhibit #16.79 - CORRECTED	52544074601	CLONAZEPAM 0.5 MG TABLET	Watson	04/01/03	06/30/03	141,215.12	10.54	20.18	9.64	15.81	24.55	30.27

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Exhibit 8
Instances in which Mr. Devor Calculates an Estimated WAC Greater than the Published WAC

				Taken from Mr. Devor's Exhibit								
Exhibit Number	NDC	Drug Information	Company	Start Date	End Date	Estimated WAC	Proxy WAC	Published WAC	Difference Between Published WAC and Estimated WAC[1]	FUL Based on Estimated WAC	Published FUL	FUL Based on Published WAC
						(Dollars)						[(i) * 1.5]
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)
Exhibit #16.79 - CORRECTED	52544074601	CLONAZEPAM 0.5 MG TABLET	Watson	07/01/03	09/30/03	3,032.33	10.54	20.18	9.64	15.81	24.55	30.27
Exhibit #16.79 - CORRECTED	52544074601	CLONAZEPAM 0.5 MG TABLET	Watson	10/01/03	12/31/03	3,244.25	10.54	20.18	9.64	15.81	24.55	30.27
Exhibit #16.85 - CORRECTED	52544076005	RANITIDINE 150 MG TABLET	Watson	10/01/04	12/31/04	1,193.64	-	64.27	-	-	170.55	96.41 *
Exhibit #16.85 - CORRECTED	52544076005	RANITIDINE 150 MG TABLET	Watson	01/01/05	03/31/05	1,193.64	-	64.27	-	-	170.55	96.41 *
Exhibit #16.91 - CORRECTED	52544076060	RANITIDINE 150 MG TABLET	Watson	01/01/04	03/31/04	537.64	0.34	8.53	8.19	0.51	20.47	12.80 *

Notes: - Dollars are displayed rounded to the nearest penny.
- Values with an asterisk (*) represent instances where the FUL based on the Published WAC is lower than the Published FUL.
- Summary is based on a comparison of the variables "Estimated WAC" and "Published WAC", both of which were obtained from exhibits with the subheader "Computation of FUL based on WAC".
- The analysis is restricted to instances where the actual difference between the "Estimated WAC" and "Published WAC", i.e., column (g) minus column (i), is greater than $0.01.

[1] Note that this column in Mr. Devor's exhibits is not necessarily the difference between the Published WAC and his Estimated WAC because Mr. Devor sometimes calculates the difference using his Proxy WAC instead of his Estimated WAC.

Source(s): - Mr. Devor's Electronic Exhibits.

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Exhibit 9
Counts of NDC-Quarters and NDCs for which the Published WAC on Mr. Devor's Exhibit Would Have Produced a Lower FUL

	Number of NDC-Qtrs for which:			Number of NDCs for which:			
	Published WAC * 1.5 is Less than the Published FUL	Published WAC & FUL are Both Reported	Share of NDC-Quarters	Published WAC * 1.5 is Ever Less than the Published FUL	Published WAC & FUL are Ever Reported for the Same Quarter	Share of NDCs	Total Number of NDCs with Exhibits
	------(Number of NDC-Quarters)------		---(Percent)--- [(a) / (b)]	----------(Number of NDCs)----------		----(Percent)---- [(d) / (e)]	
	(a)	(b)	(c)	(d)	(e)	(f)	(g)
Barr	-	32	- %	-	2	- %	2
Dey	141	161	87.6	9	9	100.0	9
Ethex	-	-		-	-		4
Ivax	263	535	49.2	14	23	60.9	23
Mylan	179	650	27.5	18	25	72.0	25
Par	53	90	58.9	4	7	57.1	10
Purepac	91	168	54.2	5	7	71.4	7
Roxane	38	44	86.4	3	3	100.0	4
Sandoz	234	514	45.5	16	25	64.0	25
Schering	-	116	-	-	5	-	6
Teva	99	197	50.3	5	11	45.5	11
Watson	255	450	56.7	19	27	70.4	31
Wyeth	15	16	93.8	4	5	80.0	7
Total:	**1,368**	**2,973**	**46.0 %**	**97**	**149**	**65.1 %**	**164**

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Exhibit 9
Counts of NDC-Quarters and NDCs for which the Published WAC on Mr. Devor's Exhibit Would Have Produced a Lower FUL

Notes:
- Shares are displayed rounded to the nearest tenth of a percent.
- Of the 3,529 total instances where, for a given NDC and quarter, Mr. Devor provides a non-zero, non-missing value for both the Published FUL and the Published AWP, 53 (1.5%) include a Published AWP that, when multiplied by 1.5, is lower than the Published FUL.
- Of the 164 NDCs for which Mr. Devor ever provides, in the same quarter, a non-zero, non-missing value for both the Published FUL and the Published AWP, 7 NDCs (4.3%) include a Published AWP that, when multiplied by 1.5, is lower than the Published FUL for at least one quarter.
- Summary is based on a comparison of the variables "Published WAC", "Published AWP", and "Published FUL", in Mr. Devor's exhibits. The first two variables were obtained from exhibits with the subheaders "Computation of FUL Based on WAC" and "Computation of FUL Based on AWP", respectively. The third variable was taken from exhibits with the aforementioned subheaders, as well as from exhibits with the subheader "Computation of FUL Based on AMP". Given that there are instances where Mr. Devor provides a different FUL in different exhibits for the same NDC and quarter, the WAC was first compared with the FUL reported in the same exhibit as the WAC was. If a non-zero FUL was not reported in the WAC exhibit for the relevant NDC-quarter combination, the WAC was compared with the FULs reported in the AWP and AMP exhibits, with priority given to the former. The same methodology was used when comparing the AWP with the FUL.
- The Published AWP and Published WAC were only compared with the Published FUL for combinations of NDC and quarter for which Mr. Devor provided a non-zero, non-missing value for both the FUL and the AWP or WAC.

Source(s):
- Mr. Devor's Electronic Exhibits.

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Exhibit 10A

Counts of NDC-Quarters for which Mr. Devor Calculates a FUL Using an NDC of the Wrong Package Size

Number of NDC-Quarters for which Mr. Devor Provides a Non-Zero Difference Between the Published FUL and his Estimated FUL Based on:

	AWP			WAC			AMP		
	NDC-Quarters with Wrong PS	Total NDC-Quarters	Share	NDC-Quarters with Wrong PS	Total NDC-Quarters	Share	NDC-Quarters with Wrong PS	Total NDC-Quarters	Share
	----(Number of NDC-Quarters)----		---(Percent)--- [(a) / (b)]	-----(Number of NDC-Quarters)-----		---(Percent)--- [(d) / (e)]	---(Number of NDC-Quarters)---		---(Percent)--- [(g) / (h)]
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
Barr	16	32	50.0 %	16	32	50.0 %	12	26	46.2 %
Dey	-	113	-	-	118	-	-	107	-
Ethex	1	33	3.0	-	-		32	64	50.0
Ivax	102	239	42.7	88	196	44.9	135	299	45.2
Mylan	197	390	50.5	282	608	46.4	378	705	53.6
Par	83	139	59.7	99	160	61.9	93	167	55.7
Purepac	82	165	49.7	82	164	50.0	39	78	50.0
Roxane	-	29	-	-	32	-	-	-	
Sandoz	171	321	53.3	132	249	53.0	245	503	48.7
Schering	-	81	-	-	73	-	-	55	-
Teva	164	260	63.1	161	257	62.6	162	259	62.5
Watson	278	452	61.5	232	380	61.1	268	427	62.8
Wyeth	17	37	45.9	-	-		24	48	50.0
Total:	**1,111**	**2,291**	**48.5 %**	**1,092**	**2,269**	**48.1 %**	**1,388**	**2,738**	**50.7 %**

Notes:
- Shares are displayed rounded to the nearest tenth of a percent.
- Package sizes from First DataBank (using the variable "Package Size") were compared to those used by CMS in setting the FUL, as provided in CMS Transmittals. With the exception of cefadroxil (GCN 048262), package sizes remain constant within a GCN. The FUL package size for cefadroxil changes from 100 to 50 with the posting of a FUL on January 22, 2002. The transition is applied in the quarter corresponding to the "current month", as of which the FUL was set, which in this case was April 2001.

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Exhibit 10A
Counts of NDC-Quarters for which Mr. Devor Calculates a FUL Using an NDC of the Wrong Package Size

Sources:
- Department of Health and Human Services, Health Care Financing Administration, "Federal Upper Limit (FUL) Changes to Transmittal No. 37," Current as of August 20, 2008.
- Department of Health and Human Services, Health Care Financing Administration, "Federal Upper Limit Drug Changes to Transmittal No. 36 Dated April 2000 - Effective December 7, 2000".
- Department of Health and Human Services, Health Care Financing Administration, "State Medicaid Manual: Part 6 - Payment for Services," Transmittal Nos. 45-6 Thru Rev. 13 (Reprint Date August 1989), 14 (August 1989), 15 (September 1989), 16 (March 1990), 17 (April 1990), 18 (July 1990), 19 (August 1991), 20 (March 1992), 21 (October 1992), 22 (April 1993), 23 (August 1993), 24 (October 1993), 25 (May 1994), 26 (October 1994), 27 (January 1995), 28 (May 1995), 29 (October 1995), 30 (June 1996), 31 (July 1996), 32 (November 1996), 33 (March 1997), 34 (July 1997), 35 (July 1998), 36 (April 2000), 36 (November 2000), and 37 (November 2001).
- First DataBank (Alabama Production) Data and *NDDF (National Drug Data File)™ Documentation Manual* (Rev. April 2000).
- Mr. Devor's Electronic Exhibits.

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Exhibit 10B
Counts of NDCs for which Mr. Devor Calculates a FUL Using an NDC of the Wrong Package Size

Number of NDCs for which Mr. Devor Ever Provides a Non-Zero Difference Between the Published FUL and his Estimated FUL Based on:

	AWP			WAC			AMP		
	NDCs with Wrong PS	Total NDCs	Share	NDCs with Wrong PS	Total NDCs	Share	NDCs with Wrong PS	Total NDCs	Share
	(Number of NDCs)		(Percent) [(a) / (b)]	(Number of NDCs)		(Percent) [(d) / (e)]	(Number of NDCs)		(Percent) [(g) / (h)]
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
Barr	1	2	50.0 %	1	2	50.0 %	1	2	50.0 %
Dey	-	8	-	-	9	-	-	9	-
Ethex	1	3	33.3	-	-		2	4	50.0
Ivax	11	21	52.4	7	12	58.3	9	18	50.0
Mylan	12	24	50.0	13	25	52.0	13	25	52.0
Par	5	9	55.6	6	10	60.0	5	9	55.6
Purepac	3	6	50.0	3	6	50.0	3	6	50.0
Roxane	-	3	-	-	4	-	-	-	
Sandoz	9	20	45.0	8	17	47.1	11	25	44.0
Schering	-	6	-	-	6	-	-	6	-
Teva	7	11	63.6	7	11	63.6	7	11	63.6
Watson	18	29	62.1	17	27	63.0	18	29	62.1
Wyeth	1	3	33.3	-	-		1	2	50.0
Total:	**68**	**145**	**46.9 %**	**62**	**129**	**48.1 %**	**70**	**146**	**47.9 %**

Notes:
- Shares are displayed rounded to the nearest tenth of a percent.
- Package sizes from First DataBank (using the variable "Package Size") were compared to those used by CMS in setting the FUL, as provided in CMS Transmittals. With the exception of cefadroxil (GCN 048262), package sizes remain constant within a GCN. The FUL package size for cefadroxil changes from 100 to 50 with the posting of a FUL on January 22, 2002. The transition is applied in the quarter corresponding to the "current month", as of which the FUL was set, which in this case was April 2001.

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Exhibit 10B
Counts of NDCs for which Mr. Devor Calculates a FUL Using an NDC of the Wrong Package Size

Sources:
- Department of Health and Human Services, Health Care Financing Administration, "Federal Upper Limit (FUL) Changes to Transmittal No. 37," Current as of August 20, 2008.
- Department of Health and Human Services, Health Care Financing Administration, "Federal Upper Limit Drug Changes to Transmittal No. 36 Dated April 2000 - Effective December 7, 2000".
- Department of Health and Human Services, Health Care Financing Administration, "State Medicaid Manual: Part 6 - Payment for Services," Transmittal Nos. 45-6 Thru Rev. 13 (Reprint Date August 1989), 14 (August 1989), 15 (September 1989), 16 (March 1990), 17 (April 1990), 18 (July 1990), 19 (August 1991), 20 (March 1992), 21 (October 1992), 22 (April 1993), 23 (August 1993), 24 (October 1993), 25 (May 1994), 26 (October 1994), 27 (January 1995), 28 (May 1995), 29 (October 1995), 30 (June 1996), 31 (July 1996), 32 (November 1996), 33 (March 1997), 34 (July 1997), 35 (July 1998), 36 (April 2000), 36 (November 2000), and 37 (November 2001).
- First DataBank (Alabama Production) Data and *NDDF (National Drug Data File)™ Documentation Manual* (Rev. April 2000).
- Mr. Devor's Electronic Exhibits.

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Exhibit 11
Counts of NDCs for which Mr. Devor Extends His Analysis Beyond an NDC's FDB Obsolete Date

Number of NDCs for which Mr. Devor Ever Provides a Non-Zero Difference Between the Published FUL and his Estimated FUL Based on:

	AWP			WAC			AMP		
	NDCs Obsolete During Period[1]	Total NDCs	Share	NDCs Obsolete During Period[1]	Total NDCs	Share	NDCs Obsolete During Period[1]	Total NDCs	Share
	--------(Number of NDCs)--------		----(Percent)---- [(a) / (b)]	--------(Number of NDCs)--------		----(Percent)---- [(d) / (e)]	---------(Number of NDCs)---------		----(Percent)---- [(g) / (h)]
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
Barr	2	2	100.0 %	2	2	100.0 %	2	2	100.0 %
Dey	4	8	50.0	5	9	55.6	1	9	11.1
Ethex	-	3	-	-	-		-	4	-
Ivax	4	21	19.0	1	12	8.3	6	18	33.3
Mylan	3	24	12.5	4	25	16.0	5	25	20.0
Par	2	9	22.2	3	10	30.0	3	9	33.3
Purepac	2	6	33.3	2	6	33.3	-	6	-
Roxane	2	3	66.7	3	4	75.0	-	-	
Sandoz	12	20	60.0	9	17	52.9	17	25	68.0
Schering	2	6	33.3	1	6	16.7	1	6	16.7
Teva	-	11	-	-	11	-	-	11	-
Watson	15	29	51.7	14	27	51.9	19	29	65.5
Wyeth	1	3	33.3	-	-		2	2	100.0
Total:	**49**	**145**	**33.8 %**	**44**	**129**	**34.1 %**	**56**	**146**	**38.4 %**

Notes: - Shares are displayed rounded to the nearest tenth of a percent.

[1] Identified as NDCs for which Mr. Devor analyzes at least one obsolete quarter. NDC-Quarters are defined as obsolete when they begin on or after a given NDC's obsolete date, which is based on the most recently reported date in the FDB annual product description files.

Sources: - Mr. Devor's Electronic Exhibits.
- First DataBank (Alabama Production) Data and *NDDF (National Drug Data File)™ Documentation Manual* (Rev. April 2000).

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